

Before the
Administrative Hearing Commission
State of Missouri



EMIN KOSO,

Petitioner,

vs.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION,

Respondent.

No. 14-0627 DT

DECISION

Emin Koso is liable for fuel tax in the amount of \$5,492.95, fees in the amount of \$378.02, and interest as allowed by law. We grant the motion for summary decision filed by the Missouri Highways and Transportation Commission (“MHTC”) and cancel the hearing.

Procedure

On May 9, 2014, Koso filed a complaint appealing an International Fuel Tax Agreement (“IFTA”)/International Registration Plan (“IRP”) audit decision. On June 10, 2014, MHTC filed an answer. On November 4, 2014, MHTC filed a motion for summary decision, or in the alternative, motion to dismiss. Regulation 1 CSR 15-3.446(6)¹ provides that we may decide this case without a hearing if MHTC establishes facts that Koso does not dispute and entitle MHTC to a favorable decision.

¹ All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

MHTC cites the request for admissions that was served on Koso on July 16, 2014. Koso did not respond to the request. Under Supreme Court Rule 59.01, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required.² Such a deemed admission can establish any fact or any application of law to fact.³ That rule applies to all parties, including those acting *pro se*.⁴ Section 536.073⁵ and 1 CSR 15-3.420(1) apply that rule to this case.

We gave Koso until November 18, 2014, to respond to the motion, but he did not respond. Therefore, the following facts are undisputed.

Findings of Fact

1. Koso's motor carrier business was based in St. Charles, Missouri, during the relevant period. Koso owned one unit licensed for 80,000 pounds. His IFTA and IRP fleets are identical.

2. Koso registered his motor carrier fleet under the IRP.

3. Koso was contacted on January 15, 2014 by telephone and informed that MHTC would conduct an IFTA/IRP audit on Koso's company for the audit period October 1, 2011 through September 30, 2013 ("audit period"). This was Koso's first audit.

4. Koso advised MHTC that Angela Wampler would participate in the audit on his behalf. Koso executed a power of attorney authorizing Wampler to represent Koso before MHTC with respect to the IFTA/IRP audit for the audit period.⁶

5. Koso received an e-mail from MHTC dated February 27, 2014 indicating the need to schedule a date for him to meet with MHTC's auditor to arrange for the audit.

² *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

³ *Linde v. Kilbourne*, 543 S.W.2d 543, 545-46 (Mo. App., W.D. 1976).

⁴ *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).

⁵ RSMo 2000. Statutory references are to RSMo Supp. 2013 unless otherwise indicated.

⁶ Wampler filed the IFTA tax returns for Koso in 2013.

6. Koso received separate correspondence dated February 27, 2014 from MHTC indicating records that needed to be provided by Koso to MHTC on or before March 27, 2014. Koso received notification from MHTC that unless Koso provided records on or before March 27, 2014, the audit would be completed and fees assessed.

7. Koso provided no records to MHTC or MHTC's auditor prior to, or following, March 27, 2014.

8. MHTC performed the audit in April 2014 without Koso's records. As a result of Koso's failure to provide adequate records during the audit, MHTC adjusted his tax liability as provided for by IFTA when there is inadequate documentation.

9. On April 29, 2014, Koso received an Audit Report and IFTA Audit Billing Invoice as a result of the audit. On April 30, 2014, Koso received an IRP Audit Billing Invoice. Koso was assessed fuel tax in the amount of \$5,492.95 as a result of the IFTA audit, and fees in the amount of \$378.02 as a result of the IRP audit.

Conclusions of Law

We have jurisdiction to hear this case.⁷ Koso has the burden of proof.⁸

Missouri imposes a tax on motor fuel used or consumed in Missouri.⁹ Federal law mandates participation in IFTA by states like Missouri that impose a motor fuel use tax.¹⁰ The purpose of IFTA is "to encourage cooperation in the administration and collection of motor fuel

⁷Sections 226.008 and 621.040.

⁸We follow the general principle that the party bringing the action has the burden of proof because no statute governs that issue in this case. *Shanks v. Missouri Div. of Family Services*, 670 S.W.2d 197, 198 (Mo. App., W.D. 1984). We further note that this allocation of the burden of proof is consistent with the allocation of the burden under § 621.050, RSMo 2000, which applied when the Director of Revenue was responsible for motor fuel taxes under Chapter 142.

⁹Section 142.803.

¹⁰49 USC § 31705.

use tax” by the states.¹¹ IFTA achieves this goal by establishing a multijurisdictional tax collection and reporting system.

Section 142.617¹² authorizes Missouri’s participation in IFTA:

The director of revenue may enter into reciprocity agreements on behalf of the state of Missouri with authorized representatives of other states for the collection and refund of interstate fuel taxes levied pursuant to this chapter. The director may adopt rules pursuant to this chapter to implement the agreement for collection and refund of interstate fuel taxes and other fuel tax agreements. The reporting requirements, as provided in the agreement, shall take precedence over the reporting requirements provided in this chapter. Where the agreement and this chapter address the same matters, the provisions of the agreement shall take precedence. A current copy of the agreement shall be maintained by the department of revenue.

Section 226.008.1 transferred the administrative and enforcement duties for IFTA from the Director of Revenue to MHTC:

The highways and transportation commission shall have responsibility and authority, as provided in this section and sections 104.805, 389.005, 389.610, and 621.040, for the administration and enforcement of:

* * *

(5) Collecting and regulating amounts payable to the state from interstate motor carriers in accordance with the provisions of the International Fuel Tax Agreement in accordance with section 142.617, and any successor or similar agreements, including the authority to impose and collect motor fuel taxes due pursuant to chapter 142, and such agreement[.]

Regulations 7 CSR 10-25.070 through 7 CSR 10-25.090 establish the rules for Missouri’s participation in IFTA, and IFTA governing documents are incorporated into MHTC regulations by reference.¹³

¹¹*May Trucking Co. v. Oregon Dept. of Transportation*, 388 F.3d 1261, 1262 (9th Cir. 2004) (internal quotations omitted).

¹²RSMo 2000.

¹³7 CSR 10-25.070(1)(A).

By failing to respond to the requests for admissions, Koso admitted that the contents of the Audit Report, the IFTA Audit Billing Invoice, and the IRP Audit Billing Invoice set forth true and accurate assessment of the amounts he owes. He specifically admitted that he owes the tax and fees in the amounts assessed.¹⁴ Koso's deemed admission establishes this fact. Koso is liable for fuel tax in the amount of \$5,492.95, fees in the amount of \$378.02, and interest as allowed by law.

Summary

We grant the motion for summary decision and cancel the hearing.

SO ORDERED on December 8, 2014.

\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

¹⁴ Request for Admissions #26.